

PR#9833

THOMPSON, STEVE

4/7/2009

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.,
Plaintiff,

vs.

CASE NO. 05-CV-00329-GKF SAJ

TYSON FOODS, INC., et al.,
Defendants.

VIDEOTAPED DEPOSITION OF STEVE THOMPSON
TAKEN ON BEHALF OF THE DEFENDANTS
ON APRIL 7, 2009, BEGINNING AT 9:30 A.M.
IN OKLAHOMA CITY, OKLAHOMA

APPEARANCES:

On behalf of the PLAINTIFF:

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REPORTED BY: Laura L. Robinson, CSR, RPR

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(APPEARANCES CONTINUED)

On behalf of the DEFENDANT-GEORGE'S, INC. AND GEORGE'S
FARMS, INC.:

Jennifer Lloyd

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ALSO PRESENT: Stephen Carns, Videographer

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STIPULATIONS

It is stipulated that the deposition of STEVE THOMPSON may be taken on the APRIL 7, 2009, pursuant to agreement and in accordance with the Oklahoma Discovery Code before Laura L. Robertson, CSR, RPR.

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1 I continued in that position until 1990. In
2 1990 I applied for the position of director of the
3 Oklahoma Department of Pollution Control. I was
4 chosen for that position.

5 I worked for the Oklahoma Department of
6 Pollution Control as the director until August of
7 1993, when I became the deputy executive director of
8 the Department of Environmental Quality. I served in
9 that position until July of 2002, when I was chosen to
10 be the executive director of the Department of
11 Environmental Quality, and I have served in that
12 position since then.

13 Q. Was there a time period when you worked for
14 the office of the Secretary of Environment?

15 A. I'm sorry, there was a time period. When
16 the Department of Environmental Quality was
17 established by statute, the Department of Pollution
18 Control was disestablished.

19 And so between July of 2000 -- I'm sorry,
20 July of 1992 and August of 2003, I served as the
21 assistant Secretary of Environment under secretary
22 Patty Eaton.

23 Q. All right. You just said August of 2003.
24 Did you mean 1993?

25 A. I'm sorry, 1993.

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1 Q. And if I could ask you to read this
2 paragraph B aloud, please.

3 A. "If the executive director finds that any of
4 the air, land or waters of the state have been or are
5 being polluted, the executive director shall make an
6 order requiring such pollution to cease within a
7 reasonable time, or require such manner of treatments
8 or disposition of the sewage or other polluting
9 material that may be in his judgment be necessary to
10 prevent further pollution. Shall be the duty of the
11 person to whom such order is directed to fully comply
12 with the order of the executive director."

13 Q. All right. When it says in subsection B,
14 "The executive director finds," what is the process
15 that you or your staff go through in order to reach a
16 finding?

17 MR. HAMMONS: I will object to the form, to
18 the extent it calls for a legal conclusion.

19 Q. (BY MR. MCDANIEL) You can go ahead and
20 answer, sir.

21 A. The process would be that an issue would
22 come to our attention, the program would evaluate the
23 problem. Our legal staff would then look at the
24 statutory authorities, and then they would bring the
25 issue to me for a decision.

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1 Q. That decision, is that equivalent to a
2 finding?

3 A. It would be a -- yes, it would be a finding,
4 and if we found that there was an activity under the
5 statute that was not being addressed, we could issue
6 an order.

7 Q. All right. Are all findings that you issue
8 under this statute, are they in writing?

9 A. Oh, yes.

10 Q. Okay. If the Oklahoma Department of
11 Environmental Quality becomes aware of unlawful
12 pollution of the waters of the state, does it have the
13 duty to undertake this process?

14 A. It has a duty absent action by another
15 agency, with more specific statutory authority.

16 Q. All right. I'm going to ask you, sir, to
17 take a moment and look at this deposition notice that
18 I gave you, and familiarize yourself with the names of
19 the defendants. I'm assuming you don't have them
20 committed to memory.

21 A. I do not.

22 Q. There is one name on here, it is Aviagen,
23 Inc. that was originally in the case style, and they
24 are no longer a defendant in the case, so I'm putting
25 a line through that. Would you take a moment and look

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1 at the names of all of the remaining defendants?

2 A. Okay.

3 Q. All right, sir. Have you as executive
4 director of Oklahoma Department of Environmental
5 Quality made a finding that any one of the companies
6 listed as defendants on that notice has caused
7 pollution of the waters of the state in the Illinois
8 River Watershed?

9 MR. HAMMONS: And I would object to the
10 form.

11 THE WITNESS: The answer to your question is
12 that if -- I don't have the records at hand, but if
13 during -- these companies are also in the business of
14 food processing, and that is under our direct
15 jurisdiction.

16 And so it may be that under our
17 jurisdictions for food processing, we may have found,
18 had a finding and may have issued an order. But I
19 don't specifically -- I don't specifically recall
20 that. But I'm not at a point where I can say
21 conclusively one way or the other whether that's the
22 case or not.

23 Q. All right. And if that were the case, are
24 you referring to, sir, potentially to a situation that
25 would involve a point source discharge associated with

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1 a food processing facility?

2 A. It could be. It could be related to a point
3 source water discharge, it could be related to air
4 quality issues, it could be related to the improper
5 disposal of process waste. It could be any number of
6 those things.

7 Again, I don't have a independent
8 recollection of having done so, but it could have
9 happened.

10 Q. All right. You know this case, this lawsuit
11 involves allegations relating to the manner in which
12 poultry litter or some may say poultry waste has been
13 handled or utilized within the Illinois River
14 Watershed. Do you understand that to be the case?

15 A. I do.

16 Q. All right. That's the context for my
17 question.

18 A. Okay.

19 Q. So let me re-ask the question, if you don't
20 mind.

21 A. Okay.

22 Q. Have you as executive director of Oklahoma
23 Department of Environmental Quality made a finding
24 that any one of these companies listed as the
25 defendant in this case has caused pollution of the

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1 waters of the state of Oklahoma in the Illinois River
2 Watershed by virtue of management or utilization of
3 poultry litter or poultry waste?

4 A. I have not.

5 MR. HAMMONS: Object to the form.

6 THE WITNESS: Sorry.

7 MR. HAMMONS: I'm sorry, I object to the
8 form. You can answer.

9 Q. (BY MR. MCDANIEL) I'm sorry, sir, would you
10 just repeat your answer so the video --

11 A. I have not.

12 Q. Now, the same context, sir, have you as
13 executive director made a finding that any poultry
14 grower operating under a contract with any one of the
15 companies that's listed as a defendant in this case
16 has caused pollution to the waters of the state of
17 Oklahoma in the Illinois River Watershed?

18 MR. HAMMONS: Object to the form.

19 THE WITNESS: Again, in the context of --
20 let me be clear. If a poultry grower has a violation
21 under our direct statutory responsibility, we could
22 have. For instance, if they had a septic tank that
23 was malfunctioning.

24 But in the context of the lawsuit, the
25 answer to your question is no, I have not.

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1 Q. (BY MR. MCDANIEL) All right. Are you
2 generally familiar with the Federal Solid Waste
3 Disposal Act?

4 A. Generally.

5 Q. And we often, or I shouldn't say we. It is
6 often referred to as RCRA?

7 A. Yes.

8 Q. R-C-R-A. And these, what I'm referring to,
9 these are federal environmental laws that address the
10 handling and disposal of solid and hazardous wastes.
11 Do you agree?

12 A. That's correct.

13 Q. What duties does the Oklahoma Department of
14 Environmental Quality have under these federal laws?

15 A. Well, we have a responsibility for the
16 proper disposal of solid waste, particularly as it
17 relates to disposal in landfills. We have a
18 responsibility, direct responsibility for disposal of
19 waste at a site that would be considered
20 an unpermitted landfill.

21 And then we have a general responsibility --
22 we have responsibility for subtitle C, which is the --
23 which is particularly related to the generation and
24 disposal of hazardous wastes.

25 Q. Does the state of Oklahoma have its own

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1 state statutory counterpart to the -- to RCRA?

2 A. It does.

3 Q. What is that statute, can you direct me to
4 that?

5 A. It is in 27-A. It is the solid waste
6 statutes. I don't have the specific site number, but
7 it is the Solid Waste Act under title 27-A.

8 Q. Does the Oklahoma act, and I'm not trying to
9 make you a legal expert, so I can accept a general
10 answer.

11 A. Okay.

12 Q. Does the Oklahoma statute parallel the
13 federal statute?

14 MR. HAMMONS: Object to the form.

15 Q. (BY MR. MCDANIEL) Generally?

16 A. Yes.

17 Q. Now, what division within Oklahoma
18 Department of Environmental Quality handles the solid
19 and hazardous waste issues within the state?

20 A. The Land Protection Division.

21 Q. Who is in charge of that division?

22 A. Scott Thompson.

23 Q. Do you know what a RCRA citizen suit is?

24 A. I just generally know.

25 Q. Whereby a private citizen or entity can

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1 growers?

2 A. Not to my knowledge.

3 Q. In response to this purported notice, did
4 ODEQ initiate any enforcement action against these
5 poultry companies or any of their contract growers?

6 A. No.

7 Q. Has Oklahoma Department of Environmental
8 Quality made a finding that any of the defendants in
9 this lawsuit have violated the Solid Waste Disposal
10 Act?

11 MR. HAMMONS: Object to the form. Calls for
12 a legal conclusion.

13 THE WITNESS: Again, in the context that we
14 are talking about, no.

15 Q. (BY MR. MCDANIEL) Okay. And to use your
16 words, in the context of these allegations contained
17 in this purported notice of intent to file a citizen's
18 suit, has Oklahoma Department of Environmental Quality
19 made a finding that any poultry grower under contract
20 with any of the defendants in this lawsuit has
21 violated the Solid Waste Disposal Act?

22 MR. HAMMONS: Object to the form.

23 THE WITNESS: No.

24 Q. (BY MR. MCDANIEL) Has the Oklahoma
25 Department of Environmental Quality made a finding

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1 that poultry waste is a solid waste under RCRA?

2 MR. HAMMONS: Object to the form.

3 THE WITNESS: Well, again, the department
4 would have made a finding related to the disposal of
5 poultry waste in a solid waste landfill, or the
6 improper disposal of waste in what would be purported
7 to be a landfill.

8 But in the context of this lawsuit, the
9 answer is no.

10 Q. (BY MR. MCDANIEL) Has Oklahoma Department
11 of Environmental Quality made a finding that poultry
12 waste is a hazardous waste under RCRA?

13 MR. HAMMONS: Object to the form.

14 THE WITNESS: No.

15 Q. (BY MR. MCDANIEL) Now, in Oklahoma, poultry
16 waste handling, storage and use is regulated by
17 Oklahoma Department of Agriculture Food and Forestry,
18 am I right?

19 A. That's correct.

20 Q. Now, Oklahoma Department of Environmental
21 Quality does not regulate poultry waste as a solid
22 waste?

23 MR. HAMMONS: Object to the form.

24 THE WITNESS: The Department of
25 Environmental Quality would regulate the processing of

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1 poultry waste in a setting in which it was being
2 packaged and sold as a nutrient.

3 We would regulate air quality, we would
4 regulate any, process water disposal, in that context
5 we would regulate it. But that's the -- well, that is
6 the context in which we would regulate it.

7 Q. (BY MR. MCDANIEL) All right. I understand
8 what you're telling me. So let me put it this way, if
9 in the practice of land applying poultry waste on
10 agricultural lands, does the Oklahoma Department of
11 Environmental Quality regulate poultry waste in that
12 setting as a solid waste?

13 A. No.

14 Q. Does it regulate poultry waste in that
15 setting as a hazardous waste?

16 MR. HAMMONS: Object to the form.

17 THE WITNESS: No.

18 Q. (BY MR. MCDANIEL) Are you generally
19 familiar with the statutes in Oklahoma that pertain to
20 the handling, storage and use of poultry waste?

21 A. It would be very general.

22 Q. Are you satisfied that the personnel at the
23 Oklahoma Department of Agriculture Food and Forestry
24 are fulfilling their statutory duties with regard to
25 regulating the handling, storage and use of poultry

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1 waste?

2 MR. HAMMONS: Object to the form.

3 THE WITNESS: I don't have enough
4 information to make an independent judgment about
5 that.

6 Q. (BY MR. MCDANIEL) Do you have any reason to
7 doubt that Oklahoma Department of Agriculture Food and
8 Forestry is performing their statutory duties with
9 regard to poultry waste management?

10 MR. HAMMONS: Object to the form.

11 THE WITNESS: No. Sorry. No.

12 Q. (BY MR. MCDANIEL) All right. I understand
13 from our earlier discussion that ODEQ as sort of the
14 final backstop as it comes to environmental protection
15 in Oklahoma, has ODEQ elected to step in to assert
16 jurisdiction with regard to the regulation of poultry
17 waste management in Oklahoma?

18 A. As of this date, no.

19 Q. Has the Oklahoma Department of Environmental
20 Quality made a finding that the spreading of poultry
21 waste on lands within the Illinois River Watershed may
22 present an imminent and substantial endangerment to
23 human health?

24 MR. HAMMONS: Object to the form.

25 THE WITNESS: No.